

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CELINA POSEY,

Plaintiff,

vs.

No. CIV 01-0497 BB/LCS

**TORTILLA INC., a New Mexico
Corporation d/b/a GARDUNOS
OF MEXICO and CARLOS CUADROS
Individually and as Agent and Alter Ego
of Gardunos,**

Defendants.

MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION

THIS MATTER is before the Court for review of an Order to Show Cause (Doc. 2), issued on August 14, 2001. The United States Magistrate Judge, having reviewed the record, relevant authorities, and being otherwise fully advised, recommends that this case be **DISMISSED WITHOUT PREJUDICE.**

PROPOSED FINDINGS

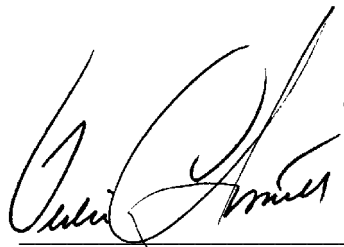
1. Plaintiff filed her Complaint in this Court on May 4, 2001. In the Order to Show Cause I noted that almost 120 days had elapsed since the action was filed, but the record reflected Defendants had not been served. Rule 4 provides that if service is not made within 120 days after the filing of the complaint the Court "shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time. FED. R. CIV. P. 4(m). The Order to Show Cause required Plaintiff to either effect service or show good cause for failure to serve Defendants within 30 days.

2. More than 120 elapsed since the filing of the Complaint and Defendants have not been served. In addition, more than 30 days have elapsed since the issuance of the Order to Show and Plaintiff has failed to respond. Under these circumstances, the Complaint should be dismissed without prejudice pursuant to Rule 4(m).

RECOMMENDED DISPOSITION

I recommend that the Complaint be dismissed without prejudice pursuant to FED. R. CIV. P. 4(m).

Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may file with the Clerk of the United States District Court, 333 Lomas Blvd NW, Albuquerque, NM 87102 written objections to such proposed findings and recommendations. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

A handwritten signature in black ink, appearing to read 'Leslie C. Smith', is written over a horizontal line.

LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE